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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,028	03/16/2001	Donald J. Gjerdigen	1991-174	5691
46267	7590	01/11/2006	EXAMINER	
HOGAN & HARTSON LLP 500 S GRAND AVE SUITE 1900 LOS ANGELES, CA 90071			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/811,028	GJERDINGEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LaToya C. Younger	1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 16, 2005 has been entered.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-24 now recite, "wherein said outside and inside rotary wheels are configured for using said vessels". The claim is indefinite because the "said vessels" have not been set forth as positive structural components of the claimed analyzer system. The claim recites the presence of a rotary wheel having nesting locations for vessels. However, the vessels are not included as structural parts of the system.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tersteeg in view of US Patent 4,906,433 to Minekane and US 5,075,079 to Kerr et al.

Tersteeg et al disclose an incubator for use with a chemical analyzer of the type where fluid is metered onto a test slide which is analyzed after a suitable period of incubation. The incubator comprises means which defines a temperature controlled chamber having a first location for wherein slides are transferred into the chamber and second location wherein slides are transferred out of the chamber. The device also comprises a rotor means and a drive means. The rotor means moves the slides about an axis generally parallel to the direction of the slide movement into and out of the chamber. A housing is also provided, as well as a circular conveyor for moving the slides through the rotary path. An inside rotary wheel for nesting washing and reading vessels is provided. An outside rotary wheel for incubation and storage of vessels is also provided.

Tersteeg et al differ from the instant invention in that there is no disclosure of first and second spur gears.

Minekane teaches an automatic analyzer having two turntables for moving reagent holders throughout the analyzer. The analyzer also has a two wheel system. The inside wheel (126) has teeth mounted on the outer periphery of its lower portion. The outside wheel (162) surrounds the inner wheel coaxially. See col. 4, line 11- col. 5, line 20. Minekane teaches that the inner and outer wheel system allows movement of the reagent holders throughout the system in a circular manner, which greatly shortens the time needed for the reagent holder to move to the position where the reagent is drawn. Overall, the throughput of the system is increased.

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It would have been obvious to one of ordinary skill in the art to use a two wheel system such as disclosed in Minekane in the analyzer of Tersteeg to decrease the time needed for the reagent vessels to move throughout the system and be filled with reagent.

Tersteeg et al further differ from the instantly claimed invention in that there is no disclosure of two pick and place assemblies.

Kerr et al teaches a slide analysis system comprising a slide holding module and a incubator module. The system further includes a pick and place mechanism (18) for withdrawing slides from the slide holding mechanism and inserting them into the incubator module. See abstract. It would have been obvious to one of ordinary skill in the art to modify the Tersteeg et al reference by including at least two pick and place assemblies to provide a means for moving test slides throughout the incubator system. Multiple pick and place mechanisms would increase the throughput of the system.

#### ***Response to Arguments***

4. Applicants' claims now recite that the inner and outer rotary wheels are configured for use with "said vessels". The clarity of this new limitation has been discussed above. However, in considering the new limitation, it is the position of the Examiner that the claimed invention is obvious over combination of Tersteeg in view of Minekane. The use of the phrase "configured to" has the same meaning as "capable of". In Tersteeg, the vessels used in the inner rotary wheels can also be used in the outer rotary wheels. Therefore, the claimed invention remains to be obvious as set forth above.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Thursday 10:30 a.m. - 7:00 p.m. and on alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MONIQUE L. COLE  
PRIMARY EXAMINER